

BAY COUNTY ELECTION COMMISSION
PORTSMOUTH CLARITY HEARING
JULY 11, 1991

THE BAY COUNTY ELECTION COMMISSION MET ON THURSDAY, JULY 11, 1991, IN THE COMMISSIONER'S GROUND FLOOR CONFERENCE ROOM OF THE BAY COUNTY BUILDING FOR THE PURPOSE OF DETERMINING CLARITY OF FOUR (4) RECALL PETITIONS FILED IN REGARD TO SOME OF THE PORTSMOUTH TOWNSHIP BOARD POSITIONS. RECALL PETITIONS WERE SUBMITTED AT THE REQUEST OF MR. EDWARD BRISTOW. THE MEETING WAS CALLED TO ORDER BY THE CHAIRMAN OF THE COMMISSION, JUDGE PAUL DONER, AT 2:15 P.M. THE FOLLOWING MEMBERS AND GUESTS WERE IN ATTENDANCE.

ROLL CALL: PAUL N. DONER, PROBATE JUDGE
 GEORGE MULLISON, PROSECUTOR
 BARBARA ALBERTSON, COUNTY CLERK
 CYNTHIA A. LUCZAK, SECRETARY
 PATRICK DUGGAN, CORP. COUNSEL
 JOHN MCQUILLAN, ATTORNEY
 JUDITH BUKOWSKI, TWP. CLERK
 EDWARD BRISTOW, PETITIONER

TOWNSHIP OFFICIALS ROBERT PAWLAK AND HENRY BRANDT WERE NOT IN ATTENDANCE.

CHAIRMAN DONER ASSIGNED NUMBERS 1 & 2 TO PETITIONS AGAINST SUPERVISOR ROBERT PAWLAK, NUMBER 3 TO THE PETITION AGAINST TREASURER HENRY BRANDT AND NUMBER 4 TO THE STATEMENT RECALLING CLERK JUDITH BUKOWSKI.

PURSUANT TO THE OPEN MEETINGS ACT, CHAIRMAN DONER ACCEPTED PUBLIC INPUT AT THIS TIME.

AS NO ONE WISHED TO ADDRESS THE COMMISSION, THE REGULAR ORDER OF BUSINESS WAS CONDUCTED.

ATTORNEY JOHN MCQUILLAN TOOK THIS OPPORTUNITY TO RESPOND TO ALLEGATIONS MADE IN RECALL PETITIONS LABELED NUMBERS ONE THROUGH FOUR. MR. MCQUILLAN CONTENDED THE PETITIONS RECALLING THE TOWNSHIP SUPERVISOR WERE NOT IN VIOLATION OF THE POSITIONS' LEGAL DUTIES; DISCRETIONARY IN CONTENT; DID NOT EVIDENCE MISCONDUCT IN OFFICE; AMBIGUOUS; WERE OF INSUFFICIENT LEGAL BASIS; UNSPECIFIC; AND DO NOT CONSTITUTE BASIS FOR RECALL.

MR. MCQUILLAN THEN QUESTIONED THE CLARITY OF RE-

CALL PETITION NUMBERED 3, DIRECTED TO TREASURER MR. BRANDT, INDICATING THE PERCENTAGE OF PROPERTY OWNERS TO BE INVOLVED IN THE SEWER PROJECT. ALSO, THAT THE PETITION LACKED CLARITY IN RESPECT TO THE "WATER PROBLEM" AND DID NOT PROVE MISCONDUCT OF THE OFFICIAL. IT WAS MR. MCQUILLAN'S OPINION, OTHER LANGUAGE IN THE STATEMENT WAS AMBIGUOUS, LACKED CLARITY OR ALLEGED CONDUCT WHICH WAS NOT IN THE PERFORMANCE OF OFFICIAL DUTIES.

TO CONCLUDE, MR. MCQUILLAN REFERRED TO PETITION #4 RECALLING CLERK JUDITH BUKOWSKI. PETITION WORDING IN REFERENCE TO THE TOWNSHIP CHARTER HAD NOT PROVEN ANY COURSE OF MISCONDUCT AS FAR AS MR. MCQUILLAN WAS CONCERNED. ATTORNEY MCQUILLAN FELT THE PETITION WAS AMBIGUOUS; CONTAINED SUBJECTIVE OPINIONS AND DID NOT PRESENT ANY FORM OF MISCONDUCT BY THE TWP. CLERK.

MR. BRISTOW VERIFIED THE "65%" PARTICIPATION AS REFERRED TO IN PETITION #3. ALSO, REITERATED THE PREPARATION OF A FORMER PETITION BY ROBERT PAWLAK, DENIED BY THE TOWNSHIP BOARD. HE INDICATED HE WAS TO DRAFT A LETTER TO BE SENT TO WASHINGTON IN THE NEAR FUTURE.

MOTION #1: GEORGE MULLISON MOVED TO DENY ALL FOUR (4) PETITIONS FOR A VARIETY OF REASONS INCLUDING THE PETITIONS WERE AMBIGUOUS, THEY DID NOT SPECIFY A COURSE OF CONDUCT IN OFFICE; AND/OR ALLEGE A RECALL FOR DUTIES THE TOWNSHIP ELECTED OFFICIALS WERE OBLIGATED TO DO BY STATE LAW. BARBARA ALBERTSON SUPPORTED THE MOTION. CHAIRMAN DONER CONCURRED WITH THE MOTION FURTHER STATING A PETITION MUST BE EITHER ACCEPTED OR DENIED AS A WHOLE, CERTAIN PORTIONS OF A PETITION COULD NOT BE ACCEPTED OR REJECTED.

A ROLL CALL VOTE ON THE ABOVE MOTION WAS APPLIED TO EACH OF THE FOUR PETITIONS INDIVIDUALLY.

PETITION #1 - TO REJECT THE PETITION AGAINST SUPERVISOR R. PAWLAK CARRIED BY 3 YEAS, 0 NAYS.

PETITION #2 - TO REJECT THE PETITION AGAINST SUPERVISOR R. PAWLAK PASSED BY 3 YEAS, 0 NAYS.

PETITION #3 - TO REJECT THE PETITION AGAINST TREASURER H. BRANDT CARRIED BY 3 YEAS, 0 NAYS.

PETITION #4 - TO REJECT THE PETITION AGAINST CLERK
JUDY BUKOWSKI ADOPTED BY 3 YEAS, 0 NAYS.

CHAIRMAN DONER STATED ALL FOUR (4) PETITIONS WERE
CONSIDERED DENIED BY THE COMMISSION FOR NOT MEETING
THE STANDARDS SET BY STATE STATUTE.

MOTION #2: GEORGE MULLISON MOVED TO GO INTO CLOSED
SESSION PURSUANT TO MCLA SECTION 15.268
(E) TO CONSULT WITH CORPORATION COUNSEL,
PATRICK DUGGAN, REGARDING TRIAL OR SET-
TLEMENT STRATEGY IN CONNECTION WITH
DON KZEWINSKI VS. BAY CO. ELECTION COM-
MISSION (91-3379-C-AA) WHEN AN OPEN
MEETING WOULD HAVE A DETRIMENTAL FIN-
ANCIAL EFFECT ON THE LITIGATING OR
SETTLEMENT POSITION OF BAY COUNTY.
JUDGE DONER SUPPORTED THE MOTION WITH
ADDITIONAL COMMENTS FROM MR. MULLISON.
IT WAS MR. MULLISON'S OPINION IT WAS
UNCONSTITUTIONAL FOR THE LEGISLATURE
TO PROVIDE A STATUTE NOT ALLOWING AN
ELECTED OFFICIAL TO CONSULT WITH AN
ATTORNEY WHEN BEING SUED IN PRIVATE.
MOTION CARRIED BY ROLL CALL VOTE OF
3 YEAS, 0 NAYS.

MOTION #3: PROSECUTOR MULLISON MOVED TO RECESS
THE MEETING TO THE CALL OF THE CHAIR.
JUDGE DONER SUPPORTED THE MOTION AND
IT WAS ADOPTED BY VOTE OF 2 YEAS, 0
NAYS. CLERK ALBERTSON HAD BEEN EXCUSED
JUST PRIOR TO THE VOTE TO RECESS. THE
MEETING WAS RECESSED AT 4:10 P.M.

RESPECTFULLY SUBMITTED

BARBARA ALBERTSON
BAY COUNTY CLERK